Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
NOVEMBER TERM, 1976
NO. 76- 943

ALBERT T. CANNADY
Petitioner

-vs-

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION and Commissioners, ROSCOE D. SANDLIN, W. K. ANDERSON, WILLIAM C. BOYD, WALLACE E. CASE, ROY A. HUNEYCUTT, HENRY E. MOORE, JAY WAGGONER, DEWEY E. WELLS, and B. E. WILSON,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

ERNEST C. RICHARDSON, III
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IN THE
SUPREME COURT OF THE UNITED STATES
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NO. 76-

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-vs-

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION and Commissioners, ROSCOE D. SANDLIN, W. K. ANDERSON, WILLIAM C. BOYD, WALLACE E. CASE, ROY A. HUNEYCUTT, HENRY E. MOORE, JAY WAGGONER, DEWEY E. WELLS, and B. E. WILSON,

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IN THE
SUPREME COURT OF THE UNITED STATES
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NO. 76-

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Respondents

Petition for Writ of Certiorari to the
Supreme Court of the United States

CITATION TO OPINION BELOW

The opinion of the Supreme Court of North Carolina is unrecorded at the date of this Petition. The Judgment of the Court of Appeals of the State of North Carolina is recorded in Book 30 NC App 247 (see Appendix A). The Judgment of the Superior Court of Craven County, North Carolina, is unrecorded. The Judgment of the Supreme Court of North Carolina was entered on October 11, 1976 (see Appendix B).

JURISDICTION

The jurisdiction of the Court is evoked under 28 USC, Section 1258.

QUESTIONS PRESENTED

1. Is Chapter 56 of the 1975 Sessions Laws as codified as Section 19A of the General Statutes of North Carolina, unconstitutional because:

(a) It provides for the taking of the property of the petitioner without just compensation in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States?

(b) It provides for the taking of the property of the petitioner without due process of law?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment Five, the Constitution of the United States:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

2. Amendment Fourteen, the Constitution of the United States:

Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF CASE

North Carolina General Statutes, Section 19A, Article 2, was passed by the North Carolina Legislature in 1975. (See Appendix C). The pertinent part of Section 19A, Article 2, states: "It is unlawful for any person to buy or sell black bears, or for any person . . . to possess or keep any black bear . . . in any enclosure, pen, cage or other place or means of captivity except as hereinafter provided . . ." North Carolina General Statute, Section 19A, (11) exempts zoos, other governmental agencies and educational institutions and individuals who provide "natural habitats" for bears in captivity. "Natural habitats" is to be defined by the North Carolina Wildlife Commission.

On June 16, 1975, the Commission adopted regulations concerning the construction of "natural habitats" facilities. The petitioner, who is the owner of a black bear, is unable to meet these requirements, and because of his inability to meet these requirements, he is in violation of North Carolina General Statutes, Section 19A, Article 2, which carries criminal penalties.

North Carolina General Statutes, Section 19A, Article 2, provides that the petitioner must sell or give his

bear to the North Carolina Wildlife Resources Commission if he cannot meet the requirements as established by them. The sales price of the bear is limited to One Hundred Dollars ($100) or the actual price paid for the bear, whichever is lower. The petitioner, in this case, was given the bear. The statute sets up no provision for determining the value of the bear and it can only be assumed that the Wildlife Resources Commission are the ones who establish the value of the bear. It should be pointed out that this statute provides that the owner of a black bear who attempts to meet the specifications of the Wildlife Resources Commission and fails, then forfeits his bear without pay, even though he may have paid in excess of One Hundred Dollars ($100) for the bear.

The criminal penalties as set forth in this statute are a Five Hundred Dollar ($500) fine or imprisonment for not more than ninety (90) days.

In a Judgment dated the 9th days of December, 1975, the Honorable Russell J. Lanier, Superior Court Judge Presiding in Craven County, North Carolina, entered Judgment upholding the constitutionality of Section 19A, Article 2 of the North Carolina General Statutes. On the 21st day of July, 1976, the North Carolina Court of Appeals affirmed the said Judgment. Said ruling of the North Carolina Court of Appeals was certified on the 10th day of August, 1976. On the 11th day of October, 1976, the North Carolina Supreme Court dismissed the petitioner's appeal.

REASONS FOR GRANTING THIS WRIT

1. Chapter 19A of the NCGS as codified in Section 19A-10 through 14 of the NCGS violates the Fifth and

Fourteenth Amendments to the United States Constitution in that it provides that the State of North Carolina through the North Carolina Wildlife Resources Commission can take the petitioner's black bear without just compensation and due process of law.

2. The Statutes provide in Section 19A-10 of the NCGS that "except as otherwise provided in the applicable statutes, it shall be unlawful for any person to buy or sell black bears, or for any person, firm or corporation to possess or keep any black bear . . . in any cage, enclosure, pen, cage or other place of means of captivity except as hereinafter provided. . ." Section 19A-12 of the NCGS provides in part that the owner of a black bear under an existing permit issued by the North Carolina Wildlife Resources Commission (see plaintiff's exhibit No. 3 page 48-49 of record on appeal to North Carolina Court of Appeals for said permit as issued to petitioner to hold a black bear). Where conditions under which said black bear is held are in violation of this article may immediately surrender the black bear and permit to the Wildlife Commission which shall compensate said person in the amount actually paid for said bear, not to exceed the sum of One Hundred Dollars ($100). The statute further provides that in lieu of surrendering such bear and permit, any person may give immediate written notice to the Wildlife Commission that plans and specifications for facilities to hold such bear without caging under conditions simulating a "natural habitat" will be submitted to the Commission for approval within thirty (30) days. In the event that such plans and specifications are not submitted or are disapproved by the Commission or the facilities are not completed

in accordance therewith within sixty (60) days after approval by the Commission continued possession of the black bear by such person shall constitute a violation of the provisions of this article and any bear shall be forfeited to the Wildlife Commission without compensation.

3. The petitioner in the present case has refused to surrender the black bear owned by him and has submitted plans and specifications to the Wildlife Resources Commission for the keeping of his bear (see plaintiff's exhibit No. 7, record on Appeal, North Carolina Court of Appeals, page 52). and said specifications were denied by the Commission. (See plaintiff's exhibit No. 8, Record on Appeal, North Caroline Court of Appeals, page 55).

Under the general statutes cited above, the petitioner is not entitled to any compensation for his bear because he paid nothing for the bear (see Page 37, North Carolina Record on Appeal, NC Court of Appeals) and because he submitted plans which did not meet with the approval of the Commission.

The General Assembly of North Carolina has in effect recognized the right of citizens to own black bears and receive compensation for them, and has granted them the authority to own black bears, under the terms of this statute by recognizing that in certain cases the owners of black bears are entitled to compensation from the State of North Carolina through the North Carolina Wildlife Resources Commission for their bears. There is also case law cited on page 11 of the petitioner's revised brief to the North Carolina Court of Appeals recognizing the right of private citizens to own domesticated wild animals.

While petitioner does not contest the fact that a state has a right to enact legislation to protect wild animals, the Constitution of the United States provides that when there is a taking of a person's property as in the present case, the agrieved party has a right to a hearing on the matter to determine the legality of the taking of his property and the compensation to be paid. As can be observed from the statute enacted by the legislature, there are no provisions for a hearing to determine either the legality of the taking of the bear of the compensation to be paid for the taking of the bear. The amount set as compensation for the taking of a black bear has been arbitrarily set at an amount not to exceed $100 with the North Carolina Wildlife Commission determining the amount to be paid. By passing this act and the upholding of its constitutionality, the Courts are, in effect, setting new precedent for the taking of an individual's property without any compensation.

The petitioner contends that the taking of petitioner's bear is similar to the condemnation of property for public use. It has been long establish that in such a taking, the agrieved party is entitled to a hearing to determine the legality of the taking and the amount of compensation to be paid. These are rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States as cited in Bloom v State of Illinois, 88 SCT 1477, 391 US 194, 20 Le2d 522; Abbott v Thetford, 354 F Supp 1280; Walker v City of Hutchinson, Kansas, 77 SCT 200; 352 US 112, 1 Le2d 178.

Confiscation without payment is repugnant to the fundamental concept of justice. Republic of Iraq v

First National City Bank, 241 F Supp 567; affirmed 353 F 2d 47; Certiorari denied 382 US 1027; 15 Le2d 540. The taking of an individual's bear by the state seems to be of minor importance when view in light of the implications involved in affirming such a statute. The ramifications of such a statute are indeed repugnant to all the principles as set forth in the Constitution of the United States.

CONCLUSIONS

For the foregoing reasons, Petitioner prays that this Writ of Certiorari be granted.

Respectfully submitted,

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TABLE OF CASES

1. Abbott v Thetford, 354 F Supp 1280
2. Bloom v State of Illinois, 88 SCT 1477, 391 US 194, 20 Le2d 522
3. Republic of Iraq v First National City Bank, 241 F Supp 567, affirmed 353 F 2d 47; Certiorari denied; 382 US 1027, 15 Le2d 540
4. Walker v City of Hutchinson, Kansas, 77 SCT 200; 352 US 112, 1 Le2d 178

APPENDIX "A"

NO. 763SC234

NORTH CAROLINA COURT OF APPEALS

Filed: 21 July 1976

ALBERT T. CANNADY — Craven County
v. — No. 75CVS758

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION and THE COMMISSIONERS: ROSCOE D. STANLEY, W. K. ANDERSON, WILLIAM C. BOYD, WALLACE E. CASE, ROY A. HONEYCUTT, CLYDE P. PATTON, HENRY E. MOORE, JAY WAGNER, DEWEY E. WELLS, and B. E. WILSON

Appeal by plaintiff from Lanier, Judge. Judgment signed 26 November 1975 in Superior Court, Craven County. Heard in the Court of Appeals 14 June 1976.

Plaintiff has owned a black bear for several years. Article 2 of Chapter 19A of the General Statutes became effective 1 July 1975. The act makes it unlawful to buy, sell or possess a black bear (Ursus americanus) except as provided by the article.

Plaintiff started this action to restrain defendant from enforcing the act against him and alleged that the article was unconstitutional on its face and as applied against him.

The case was heard by the judge without a jury. From judgment dismissing the action, plaintiff appealed.

Attorney General Edmisten, by Deputy Attorney General Millard R. Rich, Jr., for the State.

Ernest C. Richardson III, for plaintiff appellant.

VAUGHN, Judge. The act in question is as follows:

"§19A-10. **Unlawful to buy, sell or enclose (except as provided) black bear.** Except as otherwise provided in applicable statutes, it shall be unlawful for any person to buy or sell black bears or for any person, firm or corporation to possess or keep any black bear (Ursus americanus) in any enclosure, pen, cage, or other place or means of captivity except as hereinafter provided. (1975, c. 56, s. 1.)

§19A-11. **Inapplicable to bona fide zoos, etc.** The provisions of this Article shall not apply to bona fide zoos which are operated by federal, State, or local governmental agencies, or to educational institutions in which black bears are kept or exhibited as part of a bona fide course of training or research in the natural sciences, or to black bears held without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission. (1975, c. 56, s. 2.)

§19A-12. **Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture.** Any person, firm or corporation in possession of a black bear on July 1, 1975, under an existing permit issued by the Wildlife Resources Commission, where the conditions under which such black bear is held are in violation of this Article, may immediately surrender such black bear and such permit to the Wildlife Resources Commission which shall compensate such person, firm or corporation in the amount actually paid for such bear not to exceed the sum of one hundred dollars ($100.00) for any one bear. In lieu of surrendering such black bear and such permit, any such person, firm or corporation may give immediately written notice to the Wildlife Resources Commission that plans and specifications for facilities to hold such bear without caging under conditions simulating a natural habitat will be submitted to the Commission for approval within 30 days thereafter. In the event such plans and specifications are not submitted within the time thus limited, or they are disapproved by the Commission, or the facilities are not completed in accordance therewith withhin 60 days after approval by the Commission, continued possession of a black bear by such person, firm or corporation after any of such events shall constitute a violation of the provisions of this Article, and any such black bear shall be forfeited to the Wildlife Resources Commission without compensaton. (1975, c. 56, s. 3.)

§19A-13. **Violation of Article.** Violation of the provisions of this Article shall constitute a misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) or by imprisonment for not less than 90 days. (1975, c. 56, s. 4.)

§19A-14. **Enforcement of Article.** Law enforcement officers of the Wildlife Resources Commission and all other peace officers are authorized and empowered to enforce the provisions of this Article. (1975, c. 5_, s. 5.)"

In essence, plaintiff contends that the act is unconstitutional because: (a) it provides for the taking or property of the plaintiff without just compensation (b) it provides for the taking of the property of plaintiff without due process of law (c) it does not provide equal protection under the state and federal constitutions.

The authority of the State to provide for the protection of animals has long been recognized. The purpose of the statute in question is to provide for the protection of bears and to require that, when they are kept in captivity, adequate standards for their care and comfort be maintained. There was absolutely no evidence that the standards promulgated by the Wildlife Resources Commission were unreasonable. There was, therefore, no "taking" of private property so as to involve "just compensation" or "due process." Although the statute does provide compensation up to $100.00 for those electing to surrender their bears, one is not required to give up his bear if he elects to comply with the minimum standards for keeping them in captivity.

We also conclude that plaintiff's argument that the act is unconstitutional because it denies him equal protection of the laws is without merit. Plaintiff bases his argument on the exemptions from the provisions of the article set out in G.S. 19A-11. We hold that

there is a rational basis for excepting bona fide zoos operated by governmental agencies from the provisions of the act.

The judgment of the trial court is affirmed.

Affirmed.

Judges MORRIS and CLARK concur.

APPENDIX "B"

NO. 33PC THIRD DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1976

ALBERT T. CANNADY

v

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION, et al

JUDGMENT DISMISSING APPEAL AND ORDER DENYING PETITION FOR DISCRETIONARY REVIEW

763SC234

This matter came on to be considered upon petition for discretionary review under G.S. 7A-31 on the 5th day of October, 1976, by the Chief Justice and Associate Justices of the Supreme Court of North Carolina, to whom it appeared that the petition for discretionary review should be denied and that the appeal be dismissed ex mero motu.

NOW, THEREFORE, it is ordered accordingly that the petition for discretionary review be denied and that the appeal be dismissed as aforesaid and certified to the Clerk of the North Carolina Court of Appeals; whereupon, it is considered and adjudged that the plaintiff do pay the costs incurred, to wit: the sum of

TWENTY-SEVEN AND 50/100 ($27.50) DOLLARS and execution issue therefor.

Issued my hand and the seal of the Supreme Court, this the 11th day of October, 1976.

Adrian J. Newton
Clerk of the Supreme Court of
North Carolina

BY:

John R. Morgan
Assistant Clerk

cc: North Carolina Court of Appeals
Mr. Ernest C. Richardson, III, Attorney at Law
Mr. Millard R. Rich, Jr., Deputy Attorney General

APPENDIX "C"

Chapter 19A.

Protection of Animals.

Article 1.
Civil Remedy for Protection of Animals.

Sec.
19A-1. Definitions.
19A-2. Purpose.
19A-3. Preliminary injunction or restraining order.
19A-4. Permanent injunction.
19A-5 to 19A-9. [Reserved.]

Article 2.
Protection of Black Bears.

19A-10. Unlawful to buy, sell or enclose (except as provided) black bear.

Sec.
19A-11. Inapplicable to bona fide zoos, etc.
19A-12. Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture.
19A-13. Violation of Article.
19A-14. Enforcement of Article.

ARTICLE 1.

Civil Remedy for Protection of Animals.

§ 19A-1. Definitions. — For the purposes of this Chapter [Article] the following definition of terms shall be applicable:

(1) The terms "animals" and "dumb animals" shall be held to include every useful living creature.

(2) The term "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such term shall not be construed to prohibit lawful taking or attempting to take game animals or birds as allowed by law, provided further that such term shall not include activities sponsored by agencies or institutions conducting biomedical research or training or for sport as provided by the laws of North Carolina.

(3) The term "person" as used herein shall be held to include any persons, firm or corporation, including any

nonprofit corporation, such as a society for the prevention of cruelty to animals. (1969, c. 831.)

Editor's Note. — Pursuant to Session Laws 1975, c. 56, effective July 1, 1975, the former provisions of Chapter 19A have been designated Article 1 of that Chapter. The definitions in the above section are applicable only to Article 1.

§ 19A-2. Purpose. — It shall be the purpose of this Chapter [Article] to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any "person" as hereinbefore defined even though such person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. (1969, c. 831.)

§ 19A-3. Preliminary injunction or restraining order. — Upon the filing of a verified complaint in superior court in the county in which cruelty to an animal has allegedly occured, and upon petition for a preliminary injunction or temporary restraining order, the resident judge or any judge holding a regular or special session of court may in the court's discretion issue such preliminary injunction or temporary restraining order, the duration of which shall be 20 days. Such injunction or restraining order may in the discretion of the court issue without prior notice to any person named as a defendant in the verified complaint if service of process cannot be obtained, and such injunction may issue immediately and as soon as practicable be served upon every person named as a defendant. Every such preliminary injunction or restraining order, if the petition or complaint so requests, may in the discretion of the court give plaintiff the right to temporarily correct the condition giving rise to the cruel treatment of an animal; and if it shall appear upon the face of the complaint or verified petition that the condition giving rise to the cruel treatment of an animal requires that plaintiff take custody of an animal, then it shall be proper for the court in its discretion in the order to allow plaintiff to take possession of the animal. (1969, c. 831; 1971, c. 528, s. 10.)

§ 19A-4. Permanent injunction. — On the date specified in a preliminary injunction or temporary restraining order, which date shall not be later than 20 days from the issuance thereof, a resident superior court judge or a superior court judge holding a regular or special session of superior court

in the county in which the action is brought shall determine the merits of the action by trial without jury, and upon hearing such evidence as may be presented, shall enter orders as he deems appropriate, including the issuance of a permanent injunction or final determination of the custody of the animal where appropriate. (1969, c. 831; 1971, c. 528, s. 10.)

§§ 19A-5 to 19A-9: Reserved for future codification purposes.

ARTICLE 2.

Protection of Black Bears.

§ 19A-10. Unlawful to buy, sell or enclose (except as provided) black bear. — Except as otherwise provided in applicable statutes, it shall be unlawful for any person to buy or sell black bears or for any person, firm or corporation to possess or keep any black bear (*Ursus americanus*) in any enclosure, pen, cage, or other place or means of captivity except as hereinafter provided. (1975, c. 56, s. 1.)

Editor's Note. — Session Laws 1975, c. 56, s. 7, provides that the act shall become effective July 1, 1975.

§ 19A-11. Inapplicable to bona fide zoos, etc. — The provisions of this Article shall not apply to bona fide zoos which are operated by federal, State, or local governmental agencies, or to educational institutions in which black bears are kept or exhibited as part of a bona fide course of training or research in the natural sciences, or to black bears held without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission. (1975, c. 56, s. 2.)

§ 19A-12. Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture. — Any person, firm or corporation in possession of a black bear on July 1, 1975, under an existing permit issued by the Wildlife Resources Commission, where the conditions under which such black bear is held are in violation of this Article, may immediately surrender such black bear and such permit to the Wildlife Resources Commission which shall compensate such person, firm or corporation in the amount actually paid for such bear not to exceed the sum of one hundred dollars ($100.00) for any one bear. In lieu of surrendering such black bear and such permit, any such person, firm or corporation

may give immediately written notice to the Wildlife Resources Commission that plans and specifications for facilities to hold such bear without caging under conditions simulating a natural habitat will be submitted to the Commission for approval within 30 days thereafter. In the event such plans and specifications are not submitted within the time thus limited, or they are disapproved by the Commission, or the facilities are not completed in accordance therewith within 60 days after approval by the Commission, continued possession of a black bear by such person, firm or corporation after any of such events shall constitute a violation of the provisions of this Article, and any such black bear shall be forfeited to the Wildlife Resources Commission without compensation. (1975, c. 56, s. 3.)

§ 19A-13. Violation of Article. — Violation of the provisions of this Article shall constitute a misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) or by imprisonment for not less than 90 days. (1975, c. 56, s. 4.)

§ 19A-14. Enforcement of Article. — Law-enforcement officers of the Wildlife Resources Commission and all other peace officers are authorized and empowered to enforce the provisions of this Article. (1975, c. 56, s. 5.)

IN THE SUPREME COURT OF

THE UNITED STATES

TERM

ALBERT T. CANNADY

Petitioner

VS

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Respondents

ENTRY OF APPEARANCE

The Clerk will enter my appearance as Counsel for the Petitioner.

ERNEST C. RICHARDSON, III
Attorney for Petitioner

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Telephone: (919) 633-2470

IN THE SUPREME COURT OF
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VS

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Respondents

NOTICE

TO: Mr. Millard R. Rich, Jr.
Deputy Attorney General
Attorney for Respondents
North Carolina Department of Justice
Raleigh, NC 27602

You are hereby notified that a Petition for Writ of Certiorari in the above-entitled and numbered case has been docketed in the Supreme Court of the United States.

This is the 5th day of January, 1977.

ERNEST C. RICHARDSON, III
Attorney for Petitioner
405 Middle Street
Post Office Box 1594
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Telephone: (919) 633-2470

IN THE SUPREME COURT OF
THE UNITED STATES
TERM

ALBERT T. CANNADY

Petitioner

VS

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION, and Commissioners: ROSCOE D. SANDLIN, W. K. ANDERSON, WILLIAM C. BOYD, WALLACE E. CASE, ROY A. HUNEYCUTT, HENRY E. MOORE, JAY WAGGONER, DEWEY E. WELLS and B. E. WILSON

Respondents

NOTICE

TO: The Honorable Adrian Newton
Clerk of Supreme Court of North Carolina
Raleigh, NC 27602

You are hereby notified that Albert T. Cannady intends to and hereby does petition the Supreme Court of the United States for a Writ of Certiorari in the above-entitled case to review the decision and judgment of the North Carolina Supreme Court rendered and filed herein and North Carolina General Statutes, Section 19A, Article 2.

You will please prepare a certified record of the above-entitled case, including the record on appeal and

the decision rendered by the North Carolina Supreme Court, and forward the same to the United States Supreme Court.

This is the 5th day of January, 1977.

ERNEST C. RICHARDSON, III
Attorney for Petitioner
405 Middle Street
Post Office Box 1594
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Telephone: (919) 633-2470

CERTIFICATE OF SERVICE

I, Ernest C. Richardson, III, Attorney for Albert T. Cannady, Petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 5th day of January, 1977, I served a copy of the foregoing and attached Petition for a Wirt of Certiorari and Notice upon Adrian Newton, Clerk of the Supreme Court of North Carolina, by mailing a copy of same in a duly addressed envelope with first class postage prepaid to Adrian Newton, Clerk of the Supreme Court of North Carolina, at Raleigh, North Carolina, 27602; and I served a copy of the foregoing upon Millard R. Rich, Jr., Deputy Attorney General, Attorney for Respondent herein, by mailing a copy of same in a duly addressed envelope with first class postage prepaid to Millard R. Rich, Jr., Deputy Attorney General, at the North Carolina Department of Justice, Raleigh, North Carolina, 27602.

ERNEST C. RICHARDSON, III
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Supreme Court, U. S.
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MAR 24 1977
MICHAEL RODAK, JR., CLERK

IN THE

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Court of Appeals of the State of North Carolina is reported at 30 NC App. 247. The Judgment of the Supreme Court of North Carolina was entered on October 11, 1976.

JURISDICTION

The jurisdiction of the Court has been evoked under 28 USC, Section 1258.

QUESTIONS PRESENTED

1. Is Chapter 56 of the 1975 Session Laws, codified as Article 2, Chapter 19A of the General Statutes of North Carolina, unconstitutional because:

(a) It provides for the taking of the property of the petitioner without just compensation in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States?

(b) It provides for the taking of the property of the petitioner without due process of law?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment Five, Constitution of the United States:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

2. Amendment Fourteen, Section 1:

All persons born or naturalized in the United States, and the subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

3. General Statutes of North Carolina, Chapter 19A, Article 2:

Protection of Black Bears.

§ 19A-10. Unlawful to buy, sell or enclose (except as provided) black bear.– Except as otherwise provided in applicable statutes, it shall be unlawful for any person to buy or sell black bears or for any person, firm or corporation to possess or keep any black bear *(Ursus americanus)* in any enclosure, pen, cage, or other place or means of captivity except as hereinafter provided. (1975, c. 56, s. 1.)

Editor's Note.–Session Laws 1975, c. 56, s. 7, provides that the act shall become effective July 1, 1975.

§ 19A-11. Inapplicable to bona fide zoos, etc. – The provisions of this Article shall not apply to bona fide zoos which are operated by federal, State, or local governmental agencies, or to educational institutions in which black bears are kept or exhibited as part of a bona fide course of training or research in the natural sciences, or to black bears held without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission. (1975, c. 56, s. 2.)

§ **19A-12. Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture.** – Any person, firm or corporation in possession of a black bear on July 1, 1975, under an existing permit issued by the Wildlife Resources Commission, where the conditions under which such black bear is held are in violation of this Article, may immediately surrencer such black bear and such permit to the Wildlife Resources Commission which shall compensate such person, firm or corporation in the amount actually paid for such bear not to exceed the sum of one hundred dollars ($100.00) for any one bear. In lieu of surrendering such black bear and such permit, any such person, firm or corporation may give immediately written notice to the Wildlife Resources Commission that plans and specifications for facilities to hold such bear without caging under conditions simulating a natural habitat will be submitted to the Commission for approval within 30 days thereafter. In the event such plans and specifications are not submitted within the time thus limited, or they are disapproved by the Commission, or the facilities are not completed in accordance therewith within 60 days after approval by the Commission, continued possession of a black bear by such person, firm or corporation after any of such events shall constitute a violation of the provisions of this Article, and any such black bear shall be forfeited to the Wildlife Resources Commission without compensation. (1975, c. 56, s. 3.)

§ **19A-13. Violation of Article.** – Violation of the provisions of this Article shall constitute a misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) or by imprisonment for not less than 90 days. (1975, c. 56, s. 4.)

§ **19A-14. Enforcement of Article.** – Law-enforcement officers of the Wildlife Resources Commission and all other peace officers are authorized and empowered to enforce the provisions of this Article. (1975, c. 56, s. 5.)

STATEMENT OF THE CASE

Chapter 19A, Article 2 of the North Carolina General Statutes, was enacted in 1975 by the North Carolina General Assembly and became effective July 1, 1975.

On June 16, 1975, the North Carolina Wildlife Resources Commission adopted a policy with respect to the holding of black bears. (Appendix A.) The plaintiff herein was notified by mail on June 27, 1975, of the enactment of Chapter 19A, Article 2, and sent a copy of the Commission's policy (Appendix B). The plaintiff did not answer the Commission's letter. On July 28, 1975, the Commission again wrote to the Plaintiff (Appendix C). The Plaintiff replied in a letter dated August 1, 1975 (Appendix D). The Commission replied to Plaintiff's August 1 letter dated August 4, 1975 (Appendix E).

On August 5, 1975, the Plaintiff instituted a civil action in the Superior Court of Craven County, North Carolina, against the Defendants herein seeking to have Chapter 19A, Article 2 declared unconstitutional and seeking injunctive relief. On August 6, 1975, the Defendants were temporarily restrained from removing a black bear from the Plaintiff's possession and said order was extended until further order of the Court of August 13, 1975. The Defendants herein, until this date, have not taken or attempted to take possession of the Plaintiff's black bear pursuant to an order issued by a North Carolina Superior Court Judge on November 30, 1976, pending action on Plaintiff's writ filed in this Court.

ARGUMENT

1. IS CHAPTER 56 OF THE 1975 SESSION LAWS, CODIFIED AS ARTICLE 2, CHAPTER 19A OF THE GENERAL STATUTES, UNCONSTITUTIONAL BECAUSE:

(a) IT PROVIDES FOR THE TAKING OF PROPERTY OF THE PLAINTIFF WITHOUT JUST COMPENSATION?

Article 2, Chapter 19A of the General Statutes of North Carolina does not violate the Constitution of the United States Amendment V by taking the Plaintiff's property without just compensation.

The Plaintiff contends that under Article 2 of Chapter 19A, and particularly G. S. 19A-12, he is not entitled to receive any compensation from the Wildlife Resources Commission for the black bear in question because he did not purchase the bear but received it as a gift. It is true that a literal reading of G. S. 19A-12 would appear to make the Plaintiff's contention correct. However, it is clear from the record in this case and particularly Appendix B and C that the Wildlife Commission would have paid the Plaintiff $100.00 for the bear had he been willing to surrender it.

The Defendant does not admit that there has been an attempted "taking" for a "public use" within the meaning of the Fifth Amendment of the United States Constitution.

"Neither wild animals nor any parts thereof are subject to private ownership except insofar as the State may choose to make them so" (citing cases). Similarly stated, such animals become the subject of private ownership only so far as the people, through their legislature, may elect to make them so, but within the provisions of such a statute, the individual is as

much protected in the enjoyment of his rights in this species of property as in any other under the law." (Citing cases) 3A CJS 478, Animals, Section 7. See also 4 Am. Jur. 2d, Animals, Section 14.

(b) IS CHAPTER 56 OF THE 1975 SESSION LAWS, CODIFIED AS ARTICLE 2, CHAPTER 19A OF THE GENERAL STATUTES, UNCONSTITUTIONAL BECAUSE IT PROVIDES FOR THE TAKING OF THE PROPERTY OF PLAINTIFF WITHOUT DUE PROCESS OF LAW?

Article 3 of Chapter 19A of the General Statutes does not violate Section 1 of the Fourteenth Amendment to the United States Constitution by taking the Plaintiff's property without due process of law.

The only testimony in the record as to the value of the black bear was that of the Plaintiff when he stated the bear "... is worth $200-250." This testimony was given over the objection of the Defendants and the Defendants contend it was not competent evidence because no proper foundation had been laid for the testimony.

Again the Defendants contend that the General Assembly has the right, under the police power, to determine the ownership, if any, the Plaintiff may have in a black bear and that the General Assembly had done so by enacting a law which limits compensation which can be paid to the owner thereof to $100.00. It is clear from the exhibits that the Defendants herein was prepared to pay the Plaintiff $100.00 to surrender possession of the black bear to the Defendant.

CONCLUSION

The Respondents respectfully request that the petition for a Writ of Certiorari be denied.

Respectfully submitted

Rufus L. Edmisten
Attorney General

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Deputy Attorney General

Counsel for Respondents

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CERTIFICATE OF SERVICE

I, Millard R. Rich, Jr., Deputy Attorney General of the State of North Carolina, Attorney for the Respondents herein, certify that on the 24th day of March, 1977, I served a copy of the foregoing Brief of Respondents In Opposition To Petition For Writ Of Certiorari on counsel for the Petitioner by depositing a copy of same in an envelope, postage prepaid, in the United States Mail, addressed as follows:

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APPENDIX A

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NORTH CAROLINA WILDLIFE RESOURCES COMMISSION POLICY WITH RESPECT TO HOLDING BLACK BEARS IN CAPTIVITY UNDER CONDITIONS SIMULATING NATURAL HABITAT

WHEREAS, The provision of Chapter 56 of the Session Laws of 1975 prohibiting holding black bears in captivity do not apply to "black bears held without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission"; and

WHEREAS, Persons in possession of black bears under existing permits on the effective date of said law may elect to retain possession thereof pending submission of such plans and specifications to the Wildlife Resources Commission, but must forfeit such bears without compensation in the event such plans and specifications are not approved; and

WHEREAS, In making such election, such persons should be apprised of the policy of the Wildlife Resources Commission with respect to the conditions it deems necessary to simulate "a natural habitat" for black bear within the meaning of the law;

NOW, THEREFORE, The North Carolina Wildlife Resources Commission in official session this 16th day of June, 1975, resolves that it shall be the policy of the Commission to approve plans and specifications for facilities to hold black bears without caging and under conditions simulating a natural habitat, provided:

(1) The method of confinement shall be a chain link fence, wall or moat; no chains or other tethers or electric shock may be used to hold black bears;

(2) The area of confinement is at least one acre in extent for the first two bears and an additional one-eighth acre for each additional bear and the bear or bears are free, under normal conditions, to move throughout such area;

(3) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind;

(4) The area of confinement contains a pool not less than 1½ feet deep and not less than 20 square feet in area;

(5) Provision is made for a den for each bear at least 5 x 5 x 4 feet in size to which the bear or bears may retire for rest, shelter from the elements, or respite from public observance;

(6) The area of confinement presents an over-all appearance of a natural habitat and affords protection of the bear or bears from harassment or annoyance;

(7) Provision is made for the maintenance of sanitary conditions;

(8) No condition or circumstance exists which is calculated to avoid, subvert, or defeat the purpose of the law; and

(9) The person submitting the plans and specifications demonstrates by satisfactory evidence that he owns or has long-term control of real property of suitable size and terrain to permit development of the facilities in accordance with such plans and specifications within 60 days after approval thereof as required by law.

IT IS FURTHER RESOLVED, That it shall be the policy of the Commission to disapprove any plans and specifications for facilities to hold black bear without caging and under conditions simulating a natural habitat when it appears that such plans and specifications do not conform with the foregoing requirements, or when it appears that the facilities when completed will not or do not conform with such plans and specifications.

APPENDIX B

APPENDIX B

June 27, 1975

Mr. Albert T. Cannady
Route 1, Box 452
Newport, North Carolina 28570

Dear Mr. Cannady:

According to Commission records you hold a permit which authorizes holding black bear in capitivity. The 1975 General Assembly has enacted a law prohibiting the caging of black bears in North Carolina after July 1, 1975, but providing that they may be held without caging under conditions simulating a natural habitat if approved by the Wildlife Resources Commission.

Two options are available under the provisions of the new law to persons holding bears under existing permits:

(1) The bear may be surrendered to the Wildlife Resources Commission immediately and the permittee will be compensated in the actual amount paid for the bear, not to exceed $100.00.

(2) The permittee may give immediate written notice to the Wildlife Resources Commission that detailed plans and specifications of facilities to hold the bear under conditions simulating natural habitat will be submitted for approval within thirty days. If the plans are not so submitted or are disapproved after submission, or if the facilities are not completed sixty days after the plans are approved, the bear must be forfeited without compensation.

For the guidance of those who may consider selecting the second option, the Wildlife Resources Commission has

adopted a policy with respect to what it deems to be the minimum standards for holding facilities simulating a natural habitat. A copy of this policy as well as a copy of the new law is enclosed for your information.

Please let us know your decision without delay.

Cordially and sincerely,

Clyde P. Patton

Enclosures: (1) Policy with Respect to Holding Black Bears in Captivity

(2) Chapter 56, Session Laws 1975

APPENDIX C

APPENDIX C

July 28, 1975

Mr. Albert T. Cannady
Route 1, Box 452
Newport, North Carolina 28570

Dear Mr. Cannady:

On June 27, 1975, we sent you a letter explaining the effect of Chapter 56 of the Session Laws of 1975 with respect to holding black bears in captivity.

Since you have not elected to pursue the alternative of providing approved facilities for holding black bear under conditions simulating a natural habitat, your permit to hold the bear is no longer valid and your continued possession thereof is a violation of law carrying substantial penalties.

Agents of the Wildlife Resources Commission will call on you in the near future for the purpose of retrieving the bear and delivering to you the compensation provided by law. Your cooperation will eliminate the necessary of instituting court proceedings.

Cordially and sincerely,

Clyde P. Patton

APPENDIX D

APPENDIX D

August 1, 1975

Mr. Clyde P. Patton
Executive Director
North Carolina Wildlife Resources Com.
Raleigh, North Carolina 27611

RE: Plans and specifications of facilities to hold Black Bears

Dear Mr. Patton:

Below you will find plans and specifications to hold a five-year old black bear (ursus Americanus) presently owned by me:

Plans:

1. Pen eight feet by twelve feet (8 X 12) with chain link fence on all sides and top of pen with a cement floor.

2. Den, five feet by five feet by four feet (5 X 5 X 4) located inside pen.

3. Five foot tub located inside pen.

4. Electric fan placed beside the pen blowing fresh cool air into the pen for the bear during the summer months.

5. Scratching pole in center of pen 6 inches in diameter and 4 feet high.

I would respectfully request that you consider these specifications and authorize me a permit to continue to keep my bear. Should you have any questions concerning this matter, please contact my attorney, Mr. Ernest C. Richardson, III, P. O. Box 1594, New Bern, NC 28560.

Yours very truly,

Albert Thomas Cannady

APPENDIX E

APPENDIX E

August 4, 1975

Mr. Albert T. Cannady
Route 1, Box 451
Newport, N.C. 28570

Dear M. Cannady:

The August 1, 1975 description of your facilities for holding the black bear now in your possession has been carefully considered.

Please be advised that your holding pen does not meet minimum standards for a natural habitat as required by Chapter 56, Session Laws 1975, and described in enclosure 1 to my letter of June 27, 1975.

Cordially and sincerely,

Clyde P. Patton